

No. 46775-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

James Brown,

Appellant.

Kitsap County Superior Court Cause No. 14-1-00648-7

The Honorable Judge Jennifer Forbes

Appellant's Supplemental Brief

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ISSUE AND ASSIGNMENTS OF ERROR

1. The court erred by ordering James Brown to pay \$2,035 in legal financial obligations absent any inquiry into whether he had the means to do so.
2. The court erred by entering finding of fact 2.5. CP 108.

ISSUE: A court may not order a person to pay legal financial obligations (LFOs) without conducting an individualized inquiry into his/her means to do so. Did the court err by ordering James Brown to pay \$2,035 in LFOs while also finding him indigent and without analyzing whether he had the money to pay?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

At sentencing, the court did not conduct any inquiry into James Brown's financial situation. RP (10/10/14) 2-12. Mr. Brown asked for leniency in general, noting that he has nine children to support. RP (10/10/14) 7.

Still, the court ordered him to pay \$2,035 in legal financial obligations. CP 108. The court also found James Brown indigent for purposes of appeal that same day. CP 115-117.

James Brown timely appealed. CP 114.

ARGUMENT

THE TRIAL COURT ERRED BY ORDERING JAMES BROWN TO PAY \$2,035 IN LEGAL FINANCIAL OBLIGATIONS WITHOUT INQUIRING INTO HIS ABILITY TO PAY.

James Brown was found indigent at the end of trial. CP 115-117. Still, the court ordered him to pay \$2,035 in legal financial obligations (LFOs). CP 108.

The court appeared to rely on boilerplate language in the Judgment and Sentence stating, essentially, that every offender has the ability to pay LFOs. CP 108. But the court did not conduct any particularized inquiry into James Brown's financial situation at sentencing or at any other time.

RP (10/10/14) 1-12. The court erred by ordering James Brown to pay LFOs absent any indication that he had the means to do so.

The legislature has mandated that “[t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them.” RCW 10.01.160(3); *State v. Blazina*, 182 Wn.2d 827, 841, 344 P.3d 680 (2015) (emphasis added by court).

This imperative language prohibits a trial court from ordering LFOs absent an individualized inquiry into the person’s ability to pay. *Id.* Boilerplate language in the Judgment and Sentence is inadequate because it does not demonstrate that the court engaged in an individualized analysis. *Id.*

The court must consider personal factors such as incarceration, the person’s other debts (including restitution), and the receipt of means-tested benefits. *Id.*

Here, the court failed to conduct any meaningful inquiry into James Brown’s ability to pay LFOs. RP (10/10/14) 2-12. The court did not consider his financial status in any way. Indeed, the court also found James Brown indigent the same day that it imposed \$2,035 in LFOs. CP 108, 115-117.

Had the court considered the factors mandated by the Supreme Court in *Blazina*, the incarceration, lack of assets, and numerous

dependents would have weighed heavily against a finding that he had the ability to pay LFOs.

In fact, the *Blazina* court suggested that an indigent person would likely never be able to pay LFOs. *Id.* at 839 (“[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs”). James Brown was determined to be indigent at both the beginning and the end of the proceedings in trial court. CP 115-117, Order Appointing Attorney, Supp. CP.

[RAP 2.5(a) permits an appellate court to review errors even when they are not raised in the trial court. RAP 2.5(a); *Blazina*, 182 Wn.2d at 835. The *Blazina* court recently chose to review the LFO-related issue raised in this case, finding that “National and local cries for reform of broken LFO systems demand that this court exercise its RAP 2.5(a) discretion and reach the merits of this case.” *Id.*

The Supreme Court noted the significant disparities both nationally and in Washington in the administration of LFOs and the significant barriers they place to reentry of society. *Id.* at 835-36. This court should follow the Supreme Court’s lead and consider the merits of James Brown’s LFO claim even though it was not raised below.

The court erred by ordering James Brown to pay \$2,035 in LFOs absent any showing that he had the means to do so. *Blazina*, 182 Wn.2d at

841. The order must be vacated and the case remanded for a new sentencing hearing. *Id.*

CONCLUSION

The court erred by ordering James Brown to pay \$2,035 in legal financial obligations without any inquiry into his means to do so. James Brown's case must be remanded for resentencing.

Respectfully submitted on July 9, 2015,

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

James Brown, DOC#852638
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Connell, WA 99326

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Supplemental Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 9, 2015.



Jodi R. Backlund, WSBA No. 22917
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BACKLUND & MISTRY

July 09, 2015 - 11:24 AM

Transmittal Letter

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